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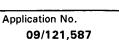
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APPLICATION NO.	FILING DATE	CHAMBERS NAMED II	NVENTOR	A	TTORNEY, DOCKET, NO.
PAUL T CLARK CLARK & ELBING		HM22/1018	٦	ZEMAN, EXAMINER	
176 FEDERAL STREET BOSTON MA 02110				ART UNIT	PAPER NUMBER
Account to the Control of	alaus also after Nei ^o			DATE MAIL ED.	10/18/67

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



Applicant(s)

Chambers, et al.

Office Action Summary

Examiner

Group Art Unit Robert A. Zeman

1645



Responsive to communication(s) filed on	•
☐ This action is FINAL .	
☐ Since this application is in condition for allowance except in accordance with the practice under <i>Ex parte Quayle</i> , 19	
A shortened statutory period for response to this action is set is longer, from the mailing date of this communication. Failur application to become abandoned. (35 U.S.C. § 133). Exten 37 CFR 1.136(a).	re to respond within the period for response will cause the
Disposition of Claims	
	is/are pending in the application.
Of the above, claim(s)	is/are withdrawn from consideration.
Claim(s)	is/are allowed.
Claim(s)	is/are rejected.
Claim(s)	
Application Papers	
☐ See the attached Notice of Draftsperson's Patent Draw	ring Review, PTO-948.
☐ The drawing(s) filed on is/are objection	ected to by the Examiner.
☐ The proposed drawing correction, filed on	is approved disapproved.
☐ The specification is objected to by the Examiner.	
$\hfill\Box$ The oath or declaration is objected to by the Examiner.	
Priority under 35 U.S.C. § 119	
Acknowledgement is made of a claim for foreign priorit	ty under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies	of the priority documents have been
received.	
received in Application No. (Series Code/Serial N	
received in this national stage application from the	
*Certified copies not received:	
☐ Acknowledgement is made of a claim for domestic price	ority under 35 U.S.C. § 119(e).
Attachment(s)	
☐ Notice of References Cited, PTO-892	
☐ Information Disclosure Statement(s), PTO-1449, Paper	NO(S).
Interview Summary, PTO-413Notice of Draftsperson's Patent Drawing Review, PTO-	948
☐ Notice of Informal Patent Application, PTO-152	5 7 0
SEE OFFICE ACTION OF	N THE FOLLOWING PAGES

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Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, drawn to a chimeric live attenuated virus composition, and methods of using that composition to prevent or treat flavivirus infection, classified in class 424, subclass 218.1.
- II. Claims 17-24, drawn to polynucleotides encoding a virus sequence, classified in class 536, subclass 24.1.
- III. Claims 25-29, drawn to gene therapy, classified in class 514, subclass 44.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are separate and distinct as the polynucleotide sequences are not needed for the method of Invention I nor are they a part of the product of Invention I.

Inventions I and II are separate and distinct as the methods are entirely different, having different steps and compounds, and intending differing results.

Inventions II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case Inventions II and II are related in that the nucleotides could be

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used in the practice of the gene therapy methods, however, the polynucleotides can also be used in a materially different process as probes, or PCR primers.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: In inventions I and II, each differing virus sequence for the second flavivirus is a separate species; i.e. each virus set forth in claims 2-5 or 18-21.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 17 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The fax number for this Art Unit is (703) 305-7401.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (703) 308-7991. The examiner can be reached between the hours of 7:30 am and 4:00 pm Monday through Friday.



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If attempts to reach the examiner by telephone are unsuccessful, Donna Wortman,

Primary Examiner can be reached at (703) 308-1032 or the examiner's supervisor, Lynette Smith,

can be reached at (703)308-3909.

LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Robert A. Zeman

October 11, 2000